

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No.: 18-768(DSD/FLN)

Strike 3 Holdings, LLC

Plaintiff,

v.

**ORDER**

John Doe, subscriber assigned  
IP address 107.4.246.135,

Defendant.

This matter is before the court upon the appeal by plaintiff Strike 3 Holdings LLC of Magistrate Judge Franklin L. Noel's April 24, 2018, order denying its ex parte motion for leave to serve a third-party subpoena prior to the Rule 26(f) conference. After a review of the order, and based on the file, record, and proceedings herein, the court denies the appeal.

The standard of review applicable to an appeal of a magistrate judge's order on nondispositive matters is "extremely deferential."<sup>1</sup> Reko v. Creative Promotions, Inc., 70 F. Supp. 2d 1005, 1007 (D. Minn. 1999). The court will reverse such an order only if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); D. Minn. LR 72.2(a)(3). "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Chakales

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<sup>1</sup> The court is unpersuaded by plaintiff's argument that the underlying motion is dispositive. A request for service of a subpoena is inherently non-dispositive.

v. Comm'r of Internal Revenue, 79 F.3d 726, 728 (8th Cir. 1996) (citations and internal quotation marks omitted). "A decision is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure." Knutson v. Blue Cross & Blue Shield of Minn., 254 F.R.D. 553, 556 (D. Minn. 2008) (citation and internal quotation marks omitted).

The court is satisfied that the magistrate judge properly exercised its discretion in determining that plaintiff is not entitled to premature service of a third-party subpoena in this matter.

Accordingly, **IT IS HEREBY ORDERED** that the appeal [ECF No. 15] is denied.

Dated: July 30, 2018

s/David S. Doty  
David S. Doty, Judge  
United States District Court